

SENATE FLOOR SUBSTITUTE FOR
HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 2

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 2003

AN ACT

RELATING TO SEX OFFENDERS; PROVIDING FOR THE INVOLUNTARY CIVIL
COMMITMENT OF SEXUAL PREDATORS; ENACTING THE SEXUAL PREDATOR
CIVIL COMMITMENT ACT; CREATING A SEX OFFENDER MANAGEMENT BOARD
WITHIN THE NEW MEXICO SENTENCING COMMISSION; PROVIDING DUTIES;
REVISING THE ELEMENTS OF THE CRIME OF KIDNAPPING; PROVIDING
INCREASED PENALTIES FOR CRIMINAL SEXUAL PENETRATION IN THE
SECOND OR THIRD DEGREE WHEN THE VICTIM IS A CHILD THIRTEEN TO
EIGHTEEN YEARS OF AGE; CREATING A NEW OFFENSE KNOWN AS CRIMINAL
SEXUAL CONTACT OF A MINOR IN THE SECOND DEGREE; PROVIDING
INCREASED PENALTIES FOR CRIMINAL SEXUAL CONTACT OF A MINOR IN
THE THIRD DEGREE; PROVIDING MINIMUM MANDATORY PENALTIES;
PROVIDING THAT A SEX OFFENDER MAY BE PLACED ON PROBATION FOR A
PERIOD OF UP TO TWENTY YEARS; ESTABLISHING FACTORS FOR THE
DISTRICT COURT TO CONSIDER WHEN DETERMINING THE DURATION, TERMS
AND CONDITIONS OF PROBATION; PROVIDING THAT A SEX OFFENDER MAY

1 BE PLACED ON PAROLE FOR A PERIOD OF UP TO TWENTY YEARS;
2 ESTABLISHING FACTORS FOR THE PAROLE BOARD TO CONSIDER WHEN
3 DETERMINING THE DURATION, TERMS AND CONDITIONS OF PAROLE;
4 REVISING THE DEFINITIONS FOR SEX OFFENDER AND SEX OFFENSE;
5 LENGTHENING REGISTRATION PERIODS FOR SEX OFFENDERS; REQUIRING A
6 SEX OFFENDER TO PROVIDE ADDITIONAL REGISTRATION INFORMATION;
7 PROVIDING FOR TREATMENT OF CRIMINAL OFFENDERS CONVICTED OF
8 CERTAIN SEXUAL OFFENSES AGAINST CHILDREN LESS THAN THIRTEEN
9 YEARS OF AGE; PROVIDING CONFORMING AMENDMENTS TO EXISTING LAWS;
10 AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING
11 APPROPRIATIONS.

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

14 Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1
15 through 21 of this act may be cited as the "Sexual Predator
16 Civil Commitment Act".

17 Section 2. [NEW MATERIAL] LEGISLATIVE FINDINGS. -- The
18 legislature finds that:

19 A. there exists an extremely dangerous group of
20 sexually violent predators who have a mental abnormality or
21 personality disorder and who are likely to engage in repeat
22 acts of sexual violence if not treated for their mental
23 abnormality or personality disorder;

24 B. because the existing civil commitment procedures
25 are inadequate to address the special needs of sexually violent

1 predators and the risks they present to society, a separate
 2 involuntary civil commitment process for the potentially long-
 3 term care, treatment and control of sexually violent predators
 4 is necessary; and

5 C. because of the nature of the mental
 6 abnormalities or personality disorders from which sexually
 7 violent predators suffer, and the dangers they present, it is
 8 necessary to house involuntarily committed sexually violent
 9 predators in an environment separate from persons otherwise
 10 involuntarily committed.

11 Section 3. [NEW MATERIAL] DEFINITIONS. --As used in the
 12 Sexual Predator Civil Commitment Act:

13 A. "agency with jurisdiction" means the agency that
 14 releases upon lawful order or authority a person serving a
 15 sentence or term of confinement and includes the corrections
 16 department, the department of health and the children, youth
 17 and families department;

18 B. "committed person" means a person who has been
 19 found to be a sexually violent predator and committed to the
 20 custody of the department, whether in a secure commitment
 21 facility, a transitional release program or a conditional
 22 release program;

23 C. "department" means the department of health;

24 D. "likely to engage in repeat acts of sexual
 25 violence" means that the person's propensity to commit sexually

1 violent offenses is of such a degree as to pose a menace to the
2 health and safety of others and that the person has serious
3 difficulty in controlling his behavior;

4 E. "mental abnormality" means a congenital or
5 acquired condition affecting the emotional or volitional
6 capacity that predisposes a person to commit sexually violent
7 offenses in a degree constituting the person a menace to the
8 health and safety of others;

9 F. "potential predator" means a person who is a
10 potential or actual subject of proceedings pursuant to the
11 Sexual Predator Civil Commitment Act;

12 G. "secretary" means the secretary of health;

13 H. "sexual motivation" means that one of the
14 purposes for which a defendant committed a crime was for the
15 purpose of the defendant's sexual gratification;

16 I. "sexually violent offense" means:

17 (1) criminal sexual penetration of a child
18 under thirteen years of age, as provided in Section 30-9-11
19 NMSA 1978;

20 (2) sexual exploitation of children, as
21 provided in Section 30-6A-3 NMSA 1978;

22 (3) sexual exploitation of children by
23 prostitution, as provided in Section 30-6A-4 NMSA 1978;

24 (4) criminal sexual contact of a minor, as
25 provided in Section 30-9-13 NMSA 1978;

1 (5) incest, as provided in Section 30-10-3
2 NMSA 1978;

3 (6) child luring, as provided in Section
4 30-37-3.2 NMSA 1978;

5 (7) an attempt to commit any of the offenses
6 set forth in Paragraphs (1) through (5) of this subsection, as
7 provided in Section 30-28-1 NMSA 1978;

8 (8) any conviction for a felony offense in
9 effect at any time prior to the effective date of the Sexual
10 Predator Civil Commitment Act that is comparable to an offense
11 described in Paragraphs (1) through (7) of this subsection or
12 any federal or other state conviction for a felony offense
13 that, if committed in this state, would be a sexually violent
14 offense pursuant to Paragraphs (1) through (7) of this
15 subsection; or

16 (9) any crime against a child under thirteen
17 years of age, except those described in Paragraphs (1) through
18 (8) of this subsection, that either at the time of sentencing
19 for the offense or subsequently during civil commitment
20 proceedings pursuant to the Sexual Predator Civil Commitment
21 Act, has been determined beyond a reasonable doubt to have been
22 sexually motivated;

23 J. "sexually violent predator" means a person who
24 has been convicted of a sexually violent offense and who
25 suffers from a mental abnormality or personality disorder that

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1 makes the person likely to engage in repeat acts of sexual
2 violence and who has serious difficulty in controlling his
3 behavior;

4 K. "transitional release" means any halfway house,
5 work release or other placement designed to assist the person's
6 adjustment and reintegration into the community once released
7 from commitment; and

8 L. "treatment staff" means the persons, agencies or
9 firms employed by or contracted with the secretary to provide
10 treatment, supervision or other services for committed persons.

11 Section 4. ~~[NEW MATERIAL]~~ NOTICE OF RELEASE OF POTENTIAL
12 PREDATOR-- EVALUATION BY MULTIDISCIPLINARY TEAM AND ATTORNEY
13 GENERAL. --

14 A. When it appears to an agency with jurisdiction
15 that a person may be a sexually violent predator, the agency
16 shall give written notice to the attorney general and the
17 multidisciplinary team established in Subsection C of this
18 section. The notice shall be given no less than ninety days
19 prior to:

20 (1) the anticipated release from total
21 confinement of a person who has been convicted of a sexually
22 violent offense, except that in the case of a person who is
23 returned to confinement for no more than ninety days as a
24 result of revocation of parole or other post-release
25 supervision, written notice shall be given as soon as

1 practicable following the person's readmission to confinement;

2 (2) the release of a person who has been
3 charged with a sexually violent offense and who has been
4 determined to be incompetent to stand trial; or

5 (3) the release of a person who has been found
6 not guilty by reason of insanity of a sexually violent offense.

7 B. The agency with jurisdiction shall inform the
8 attorney general and the multidisciplinary team of the
9 following:

10 (1) the potential predator's name, identifying
11 factors, anticipated future residence and offense history; and

12 (2) documentation of institutional adjustment
13 and any treatment received.

14 C. The secretary of corrections shall establish a
15 multidisciplinary team, which may include individuals from
16 other state agencies, to review available records of each
17 person referred to the team pursuant to Subsection A of this
18 section. The team, within thirty days of receiving notice,
19 shall assess whether the potential predator is a sexually
20 violent predator. The team shall notify the attorney general
21 of its assessment.

22 D. The attorney general shall appoint a
23 prosecutor's review committee to review the records of each
24 person referred to the attorney general pursuant to Subsection
25 A of this section. The prosecutor's review committee shall

1 assist the attorney general in the determination of whether the
2 person is a sexually violent predator. The assessment of the
3 multidisciplinary team shall be made available to the attorney
4 general and the prosecutor's review committee.

5 E. The agency with jurisdiction and its employees
6 and officials, members of the multidisciplinary team, members
7 of the prosecutor's review committee and individuals
8 contracting, appointed or volunteering to perform services
9 pursuant to this section shall be immune from liability for any
10 good-faith conduct under this section.

11 F. The provisions of this section are not
12 jurisdictional, and failure to comply with its provisions does
13 not prevent the attorney general from proceeding against a
14 person otherwise subject to commitment pursuant to the Sexual
15 Predator Civil Commitment Act.

16 Section 5. [NEW MATERIAL] PETITION FOR COMMITMENT. --

17 A. Upon a determination by the attorney general and
18 the prosecutor's review committee pursuant to Section 4 of the
19 Sexual Predator Civil Commitment Act that a potential predator
20 is a sexually violent predator, the attorney general may file a
21 petition with the district court, within seventy-five days of
22 the date the attorney general received the written notice by
23 the agency of jurisdiction as provided in Subsection A of
24 Section 4 of the Sexual Predator Civil Commitment Act, alleging
25 that the person is a sexually violent predator and stating

1 sufficient facts to support the allegation.

2 B. The provisions of this section are not
3 jurisdictional, and failure to comply with its provisions in no
4 way prevents the attorney general from proceeding against a
5 person otherwise subject to the provisions of the Sexual
6 Predator Civil Commitment Act.

7 Section 6. [NEW MATERIAL] DETERMINATION OF PROBABLE
8 CAUSE. --

9 A. Upon filing of a petition pursuant to Section 5
10 of the Sexual Predator Civil Commitment Act, the district court
11 shall determine whether probable cause exists to believe that
12 the potential predator is a sexually violent predator. If the
13 court determines that probable cause exists, the court shall
14 direct that the potential predator be taken into custody.

15 B. Within seventy-two hours after a potential
16 predator is taken into custody pursuant to Subsection A of this
17 section, the potential predator shall be provided with notice
18 of, and an opportunity to appear in person at, a hearing to
19 contest probable cause as to whether the potential predator is
20 a sexually violent predator. At the hearing, the court shall:

21 (1) verify the potential predator's identity;
22 and

23 (2) determine whether probable cause exists to
24 believe that the potential predator is a sexually violent
25 predator. The state may rely upon the petition or supplement

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1 the petition with additional documentary evidence or live
2 testimony.

3 C. At the probable cause hearing, the potential
4 predator has, in addition to the rights previously specified,
5 the right to:

6 (1) be represented by counsel;

7 (2) present evidence on the potential
8 predator's behalf;

9 (3) cross-examine witnesses who testify
10 against the potential predator; and

11 (4) view and copy all petitions and reports in
12 the court file.

13 D. If the court determines that there is probable
14 cause that the potential predator is a sexually violent
15 predator, the court shall direct that the potential predator be
16 transferred to a county jail or other appropriate secure
17 facility for an evaluation as to whether the potential predator
18 is a sexually violent predator. The evaluation shall be
19 conducted by a person, appointed by the court, deemed to be
20 professionally qualified to conduct the examination.

21 Section 7. [NEW MATERIAL] TRIAL--PROCEDURE. --

22 A. Within sixty days after the completion of a
23 hearing held pursuant to Section 6 of the Sexual Predator Civil
24 Commitment Act, the court shall conduct a trial to determine
25 whether the person is a sexually violent predator. The trial

1 may be continued upon the request of either party upon a
2 showing of good cause, or by the court on its own motion in the
3 due administration of justice, so long as the potential
4 predator will not be substantially prejudiced.

5 B. At all stages of the proceedings under the
6 Sexual Predator Civil Commitment Act, a person subject to that
7 act shall be entitled to the assistance of counsel, and if the
8 person is indigent, the court shall appoint counsel to assist
9 the person.

10 C. When a person is subjected to an examination
11 pursuant to the Sexual Predator Civil Commitment Act, the
12 person may retain experts or professional persons to perform an
13 examination on the person's behalf. When the person wishes to
14 be examined by a qualified expert or professional person of the
15 person's own choice, the examiner may have reasonable access to
16 the person for the purpose of the examination, as well as to
17 all relevant medical and psychological records and reports.

18 D. In the case of a potential predator who is
19 indigent, the court, upon the potential predator's request,
20 shall determine whether the services are necessary and if
21 compensation for the services is reasonable. If the court
22 determines that the services are necessary and the expert or
23 professional person's requested compensation for the services
24 is reasonable, the court shall assist the potential predator in
25 obtaining an expert or professional person to perform an

1 examination or participate in the trial on the potential
2 predator's behalf. The court shall approve payment for the
3 services upon the filing of a certified claim for compensation
4 supported by a written statement specifying the time expended,
5 services rendered, expenses incurred on behalf of the potential
6 predator and compensation received in the same case or for the
7 same services from any other source.

8 E. The potential predator, the attorney general or
9 the court may demand that the trial be before a jury. A demand
10 for a jury trial shall be filed, in writing, at least four days
11 prior to trial. A jury shall consist of twelve jurors unless
12 the parties agree in writing, with the approval of the court,
13 that the jury shall consist of any number of jurors less than
14 twelve. If no demand is made, the trial shall be before the
15 court without a jury.

16 Section 8. [NEW MATERIAL] TRIAL-- DETERMINATION--
17 COMMITMENT PROCEDURE. --

18 A. In a trial conducted pursuant to Section 7 of
19 the Sexual Predator Civil Commitment Act, the court or jury
20 shall determine whether, beyond a reasonable doubt, the
21 potential predator is a sexually violent predator. If the
22 determination is made by a jury, the determination shall be by
23 unanimous verdict. If the court or jury determines that a
24 person is a sexually violent predator, the person shall be
25 committed to the custody of the secretary for care, treatment

1 and control until such time as the committed person's mental
2 abnormality or personality disorder has changed so that the
3 person is safe to be at large. The care, treatment and control
4 shall be provided at a facility operated by the department. At
5 all times, a committed person provided with care, treatment and
6 control by the department shall be kept in a secure facility
7 and shall be segregated at all times from other patients under
8 the supervision of the secretary. The department may enter
9 into an agreement with the corrections department for the
10 confinement of sexually violent predators. Sexually violent
11 predators committed to the jurisdiction of the corrections
12 department shall be housed and managed separately from other
13 offenders in the custody of the corrections department, and
14 except for occasional instances of supervised incidental
15 contact, shall be segregated from other offenders.

16 B. If a committed person, while committed to the
17 custody of the secretary, is taken into custody by a law
18 enforcement officer for a parole revocation proceeding, an
19 arrest or a conviction for a criminal offense of any nature,
20 upon release from the custody of the law enforcement officer,
21 the person shall be returned to the custody of the secretary
22 for further treatment. During any period of time a committed
23 person is not in the actual custody or supervision of the
24 secretary, the secretary shall be excused from the provisions
25 of Section 9 of the Sexual Predator Civil Commitment Act. The

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1 secretary shall give notice to the court as soon as reasonably
2 possible after the taking of the committed person into custody
3 that the committed person is no longer in treatment pursuant to
4 the Sexual Predator Civil Commitment Act and shall give notice
5 to the court when the committed person is returned to the
6 custody of the secretary for further treatment.

7 C. If the court or jury is not satisfied beyond a
8 reasonable doubt that the person is a sexually violent
9 predator, the court shall direct the person's release.

10 D. Upon a mistrial, the court shall direct that the
11 person be held at a county jail or other appropriate secure
12 facility until another trial is conducted. A subsequent trial
13 following a mistrial shall be held within ninety days of the
14 previous trial, unless the subsequent trial is continued as
15 provided in Section 7 of the Sexual Predator Civil Commitment
16 Act.

17 E. If a potential predator charged with a sexually
18 violent offense is found to be incompetent to stand trial, and
19 the potential predator's commitment is sought pursuant to this
20 section, the judge or jury shall first hear evidence and
21 determine whether the person did commit the acts charged. The
22 hearing on this issue shall comply with all the procedures
23 specified in Section 7 of the Sexual Predator Civil Commitment
24 Act and this section. In addition, the rules of evidence
25 applicable in criminal cases shall apply, and all

1 constitutional rights available to defendants at criminal
 2 trials, other than the right not to be tried while incompetent,
 3 shall apply. After hearing evidence on the issue, the judge or
 4 jury shall make specific findings on whether the potential
 5 predator did commit the acts charged, the extent to which the
 6 person's incompetence or developmental disability affected the
 7 outcome of the hearing, including its effect on the person's
 8 ability to consult with and assist counsel and to testify on
 9 the person's own behalf, the extent to which the evidence could
 10 be reconstructed without the assistance of the person and the
 11 strength of the prosecution's case. If after the conclusion of
 12 the hearing on this issue, the judge or jury finds, beyond a
 13 reasonable doubt, that the person did commit the acts charged,
 14 the court shall enter a final order, appealable by the person
 15 on that issue, and may proceed to consider whether the person
 16 should be committed.

17 F. A determination that a person is a sexually
 18 violent predator pursuant to this section may be appealed;
 19 provided that the potential predator shall not be entitled to
 20 release pending the appeal.

21 Section 9. [NEW MATERIAL] ANNUAL EXAMINATION AND
 22 REVIEW. --

23 A. A person committed pursuant to the Sexual
 24 Predator Civil Commitment Act shall have an examination of that
 25 person's mental condition once every year. The committed

1 person may retain, or, if the person is indigent and so
2 requests, the court may appoint a qualified professional to
3 examine the person. The professional shall have access to all
4 records concerning that person. An annual report shall be
5 provided by the secretary to the court that committed the
6 person, and the court shall conduct an annual review of the
7 status of the committed person. Nothing contained in the
8 Sexual Predator Civil Commitment Act prohibits a committed
9 person from otherwise petitioning the court for discharge at
10 the annual review. The secretary shall provide a committed
11 person with an annual written notice of the committed person's
12 right to petition the court for release over the secretary's
13 objection. The notice shall contain a waiver of rights. The
14 secretary shall forward the notice and waiver form to the court
15 with the annual report. A committed person shall have the
16 right to representation by an attorney for the review, but the
17 committed person is not entitled to be present at the review.

18 B. If a committed person has petitioned the court
19 for release and if, after reviewing the annual report and the
20 information contained in the petition, the court at the review
21 determines that probable cause exists to believe that the
22 person's mental abnormality or personality disorder has changed
23 so that the person is safe to be placed in transitional
24 release, the court shall set a hearing on the issue. At the
25 hearing for transitional release, a committed person shall be

1 entitled to be present and entitled to the benefit of all
2 constitutional protections that were afforded the committed
3 person at the initial commitment trial. The attorney general
4 shall represent the state and may have the committed person
5 evaluated by professionals chosen by the state. A committed
6 person may also request an expert evaluation on the committed
7 person's behalf, and the court shall appoint an expert if the
8 committed person is indigent and requests an appointment.

9 Either party may demand a jury trial. The burden of proof at
10 the hearing shall be upon the state to prove beyond a
11 reasonable doubt that a committed person's mental abnormality
12 or personality disorder remains such that the committed person
13 is not safe to be placed in transitional release and if placed
14 in transitional release is likely to engage in acts of sexual
15 violence.

16 C. If, after the hearing, the court or jury is
17 convinced beyond a reasonable doubt that a committed person is
18 not appropriate for transitional release, the court shall order
19 that the committed person remain in secure commitment.
20 Otherwise, the court shall order that the committed person be
21 placed in transitional release and the secretary shall transfer
22 the person to the transitional release program.

23 Section 10. [NEW MATERIAL] PETITION FOR TRANSITIONAL
24 RELEASE-- PROCEDURE. --

25 A. If the secretary determines that a committed

1 person's mental abnormality or personality disorder has changed
2 so that the person is not likely to commit predatory acts of
3 sexual violence if placed in transitional release, the
4 secretary shall authorize the committed person to petition the
5 court for transitional release. The petition shall be served
6 upon the court and the attorney general. The court, upon
7 receipt of the petition for transitional release, shall order a
8 hearing within thirty days. The attorney general shall
9 represent the state and may have the committed person examined
10 by a professional of the attorney general's choice. The
11 hearing shall be before a jury if demanded by either the
12 committed person or the attorney general. The burden of proof
13 shall be upon the attorney general to show beyond a reasonable
14 doubt that the committed person's mental abnormality or
15 personality disorder remains such that the committed person is
16 not safe to be at large and that if placed in transitional
17 release is likely to commit a sexually violent offense.

18 B. If, after the hearing, the court is convinced
19 beyond a reasonable doubt that the committed person is not
20 appropriate for transitional release, the court shall order
21 that the person remain in secure commitment. Otherwise, the
22 court shall order that the person be placed in transitional
23 release and the secretary shall transfer the person to the
24 transitional release program.

25 Section 11. [NEW MATERIAL] TRANSITIONAL RELEASE. --

1 A. The secretary may contract for services to be
2 provided in the transitional release program. During the
3 period when a committed person is in transitional release, the
4 person shall comply with rules the secretary may establish for
5 the program and shall comply with every directive of the
6 treatment staff of the transitional release program.

7 B. When a committed person is in a transitional
8 release program and the treatment staff determines that the
9 committed person has violated a rule or directive associated
10 with the transitional release program, the treatment staff may
11 remove the person from the transitional release program and
12 return the person to the secure commitment facility, or may
13 request the district court to issue an emergency ex parte order
14 directing a law enforcement officer to take the person into
15 custody and return the person to a secure commitment facility.
16 The request may be made verbally or by telephone, but shall be
17 followed in written or facsimile form delivered to the court by
18 not later than 5:00 p.m. of the first day the district court is
19 open for the transaction of business after the verbal or
20 telephonic request was made.

21 C. When a committed person is returned to a secure
22 commitment facility from a transitional release program, notice
23 thereof shall be given by the secretary to the court. The
24 court shall set the matter for a hearing within two working
25 days of receipt of notice of the committed person's having been

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1 returned to the secure commitment facility and cause notice
2 thereof to be given to the attorney general, the committed
3 person and the secretary. The attorney general shall have the
4 burden of proof to show probable cause that the committed
5 person violated conditions of transitional release. The
6 hearing shall be heard by the court, without a jury. At the
7 conclusion of the hearing, the court shall issue an order
8 returning the committed person to the secure commitment
9 facility or to the transitional release program and may order
10 further conditions with which the person must comply if the
11 person is returned to the transitional release program.

12 Section 12. [NEW MATERIAL] CONDITIONAL RELEASE. --

13 A. During the period when a committed person is in
14 transitional release, the person at least annually, and at any
15 other time deemed appropriate by the treatment staff, shall be
16 examined by the treatment staff to determine if the person's
17 mental abnormality or personality disorder has changed so as to
18 warrant the person being considered for conditional release.
19 The treatment staff shall forward a report of its examination
20 to the court. After reviewing the report, if the court
21 determines that probable cause exists to believe that the
22 committed person's mental abnormality or personality disorder
23 has changed so that the person is safe to be placed in
24 conditional release, the court shall then set a hearing on the
25 issue. The attorney general shall have the burden of proof to

1 show beyond a reasonable doubt that the committed person's
 2 mental abnormality or personality disorder remains such that
 3 the person is not safe to be at large and that if placed on
 4 conditional release is likely to engage in acts of sexual
 5 violence. The committed person shall have the same rights as
 6 enumerated in Section 7 of the Sexual Predator Civil Commitment
 7 Act. Subsequent to either a court review or a hearing, the
 8 court shall issue an appropriate order with findings of fact.
 9 The order of the court shall be provided to the attorney
 10 general, the committed person and the secretary.

11 B. If, after the hearing, the court is convinced
 12 beyond a reasonable doubt that the committed person is not
 13 appropriate for conditional release, the court shall order that
 14 the person remain either in secure commitment or in
 15 transitional release. Otherwise, the court shall order that
 16 the committed person be placed on conditional release.

17 Section 13. [NEW MATERIAL] CONDITIONAL RELEASE--PLAN OF
 18 TREATMENT--HEARING FOR FINAL RELEASE. --

19 A. If, after a hearing conducted pursuant to
 20 Section 12 of the Sexual Predator Civil Commitment Act, the
 21 court determines that a committed person should be placed on
 22 conditional release, the court, based upon the recommendation
 23 of the treatment staff, shall establish a plan of treatment
 24 that the person shall be ordered to follow. The plan of
 25 treatment may include:

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1 (1) provisions as to where the committed
2 person shall reside and with whom; and

3 (2) requirements for taking prescribed
4 medications, attending individual and group counseling,
5 maintaining employment, having no contact with children, not
6 frequenting facilities, locations, events or otherwise in which
7 children are likely to be present and not engaging in
8 activities in which contact with children is likely.

9 B. Upon a showing by a committed person that the
10 person accepts the plan of treatment and is prepared to follow
11 it, the court shall release the person from the transitional
12 release program.

13 C. When a minimum of five years has passed and a
14 committed person has been free of violations of conditions of
15 the person's treatment plan, the treatment staff or other
16 professionals directed by the court may examine the person to
17 determine if the person's mental abnormality or personality
18 disorder has changed so as to warrant being considered for
19 final discharge. A report shall be forwarded to the court.
20 After reviewing the report, if the court determines that
21 probable cause exists to believe that the committed person's
22 mental abnormality or personality disorder has changed so that
23 the person is safe to be considered for final discharge, the
24 court shall set a formal hearing on the issue. The attorney
25 general shall have the burden of proof to show beyond a

1 reasonable doubt that the person's mental abnormality or
2 personality disorder remains such that the person is not
3 appropriate for final discharge. The person shall have the
4 same rights as enumerated in Section 7 of the Sexual Predator
5 Civil Commitment Act. Subsequent to either a court review or a
6 hearing, the court shall issue an appropriate order with
7 findings of fact. The order of the court shall be provided to
8 the attorney general, the committed person and the secretary.

9 D. If, after a hearing, the court is convinced
10 beyond a reasonable doubt that the committed person is not
11 appropriate for final discharge, the court shall continue
12 custody of the person with the secretary for placement in a
13 secure commitment facility, transitional release program or
14 conditional release program. Otherwise, the court shall order
15 the person finally discharged. In the event the court does not
16 order final discharge of the person, the committed person still
17 retains the right to annual reviews.

18 E. At any time during which a committed person is
19 on conditional release and the professional designated by the
20 court in the treatment plan to monitor the person's compliance
21 with the plan determines that the person has violated a
22 material condition of that plan, the professional may request
23 the district court to issue an emergency ex parte order
24 directing a law enforcement officer to take the committed
25 person into custody and return the person to a secure

1 commitment facility. The request may be made verbally or by
2 telephone, but shall be followed in written or facsimile form
3 delivered to the court not later than 5:00 p.m. of the first
4 day the district court is open for the transaction of business
5 after the verbal or telephonic request was made.

6 F. When a committed person is returned to a secure
7 commitment facility from conditional release, notice thereof
8 shall be given by the secretary to the court. The court shall
9 set the matter for a hearing within two working days of receipt
10 of notice of the committed person's having been returned to the
11 secure commitment facility and cause notice thereof to be given
12 to the attorney general, the committed person and the
13 secretary. The attorney general shall have the burden of proof
14 to show probable cause that the committed person violated
15 conditions of conditional release. The court shall conduct the
16 hearing without a jury. At the conclusion of the hearing, the
17 court shall issue an order returning the committed person to
18 the secure commitment facility, to the transitional release
19 program or to conditional release, and may order further
20 conditions with which the committed person must comply if the
21 person is returned to either the transitional release program
22 or to conditional release.

23 G. A final discharge shall not prevent a person
24 from being prosecuted for any criminal acts that the person is
25 alleged to have committed or from being subject in the future

1 to a subsequent commitment pursuant to the Sexual Predator
2 Civil Commitment Act.

3 Section 14. [NEW MATERIAL] NOTICE TO VICTIMS OF THE
4 RELEASE OF A COMMITTED PERSON. --

5 A. In addition to any other information required to
6 be released pursuant to the Sexual Predator Civil Commitment
7 Act, prior to the release of a person committed pursuant to
8 that act, the secretary shall give written notice of the
9 person's placement or release to any victim of the person's
10 activities or crime whose address is known to the secretary;
11 provided that failure to notify shall not be a reason for
12 postponement of release.

13 B. A failure to notify pursuant to this section
14 shall not create a cause of action against the state or an
15 employee of the state who acts within the scope of his
16 employment.

17 Section 15. [NEW MATERIAL] RIGHT OF COMMITTED PERSON TO
18 PETITION. -- Nothing in the Sexual Predator Civil Commitment Act
19 shall prohibit a committed person from filing a petition for
20 transitional release, conditional release or final discharge
21 pursuant to the provisions of that act; provided that, if a
22 person has previously filed a petition for transitional
23 release, conditional release or final discharge without the
24 secretary's approval and the court determined either, upon
25 review of the petition or following a hearing, that the

1 petition was frivolous or that the committed person's condition
2 had not so changed that the person was safe to be at large, the
3 court shall deny the subsequent petition unless it contains
4 facts upon which a court could find the condition of the
5 committed person had changed so that a hearing was warranted.
6 Upon receipt of a first or subsequent petition from a committed
7 person without the secretary's approval, the court shall
8 endeavor whenever possible to review the petition and determine
9 if the petition is based upon frivolous grounds and, if so,
10 shall deny the petition without a hearing.

11 Section 16. [NEW MATERIAL] CONSTITUTIONAL PROTECTIONS. --
12 The involuntary detention or commitment of persons pursuant to
13 the Sexual Predator Civil Commitment Act shall conform to all
14 constitutional requirements for care and treatment.

15 Section 17. [NEW MATERIAL] SPECIAL ALLEGATION OF SEXUAL
16 MOTIVATION-- PROCEDURE. --

17 A. In any criminal case other than those offenses
18 described in Paragraphs (1) through (8) of Subsection I of
19 Section 3 of the Sexual Predator Civil Commitment Act, the
20 district attorney shall file a special allegation of sexual
21 motivation within ten days after arraignment when sufficient
22 admissible evidence exists that, when considered with the most
23 plausible, reasonably foreseeable defense that could be raised
24 under the evidence, would justify a finding of sexual
25 motivation by a reasonable and objective fact finder.

1 B. In a criminal case in which there has been a
2 special allegation of sexual motivation, the state shall prove
3 beyond a reasonable doubt that the accused committed the crime
4 with a sexual motivation. The court or jury, if it finds the
5 defendant guilty, shall also find a special verdict as to
6 whether the defendant committed the crime with a sexual
7 motivation.

8 C. The district attorney shall not withdraw the
9 special allegation of sexual motivation without approval of the
10 court, through an order of dismissal of the special allegation.
11 The court shall not dismiss the special allegation unless it
12 finds that the order is necessary to correct an error in the
13 initial charging decision or unless there are evidentiary
14 problems that make proving the special allegation doubtful.

15 Section 18. [NEW MATERIAL] CONFIDENTIAL INFORMATION OR
16 RECORDS. --In order to protect the public, relevant information
17 and records that are otherwise confidential or privileged shall
18 be released to the agency with jurisdiction or the attorney
19 general for the purpose of meeting the notice requirement
20 provided in Section 4 of the Sexual Predator Civil Commitment
21 Act and for determining whether a person is or continues to be
22 a sexually violent predator.

23 Section 19. [NEW MATERIAL] COURT RECORDS. --Any
24 psychological reports, drug and alcohol reports, treatment
25 records, reports of the diagnostic center or medical records

1 that have been submitted to the court or admitted into evidence
2 pursuant to the provisions of the Sexual Predator Civil
3 Commitment Act shall be part of the record, but shall be sealed
4 and opened only on order of the court.

5 Section 20. [NEW MATERIAL] INELIGIBILITY FOR BAIL, BOND,
6 HOUSE ARREST OR OTHER RELEASE. --A person for whom a petition
7 pursuant to Section 5 of the Sexual Predator Civil Commitment
8 Act has been filed and who is in the secure confinement of the
9 state shall not be eligible for bail, bond, house arrest or any
10 other measures for releasing the person from the physical,
11 protective custody of the state.

12 Section 21. [NEW MATERIAL] COSTS--RESPONSIBILITY OF
13 SECRETARY. --The secretary is responsible for all costs relating
14 to the evaluation and treatment of committed persons pursuant
15 to any provision of the Sexual Predator Civil Commitment Act.
16 Reimbursement may be obtained by the secretary for the cost of
17 care and treatment, including placement in transitional
18 release, of committed persons who are not indigent by assessing
19 a fee pursuant to Section 43-1-25 NMSA 1978.

20 Section 22. A new section of Chapter 9, Article 3 NMSA
21 1978 is enacted to read:

22 "[NEW MATERIAL] SEX OFFENDER MANAGEMENT BOARD-- CREATION--
23 MEMBERSHIP-- DUTIES. --

24 A. There is created within the New Mexico
25 sentencing commission the "sex offender management board".

1 Members of the sex offender management board who are not
2 members of the New Mexico sentencing commission, whose
3 membership is set forth in Section 9-3-10 NMSA 1978, shall not
4 be voting members of the New Mexico sentencing commission.

5 B. The sex offender management board shall be
6 composed of the following members or their designees:

- 7 (1) the attorney general;
- 8 (2) a district attorney appointed by the
9 district attorneys association of New Mexico;
- 10 (3) the chief public defender;
- 11 (4) a district court judge appointed by the
12 district court judge's association of New Mexico;
- 13 (5) the secretary of corrections;
- 14 (6) the secretary of health;
- 15 (7) the secretary of children, youth and
16 families;
- 17 (8) one public member appointed by the
18 governor who is a board member of a New Mexico victims
19 organization;
- 20 (9) two representatives appointed by the
21 governor who are mental health professionals licensed to
22 practice in New Mexico. One of the mental health professionals
23 shall be a member of the association for the treatment of
24 sexual abusers and one shall be a juvenile sex offender
25 treatment specialist;

1 (10) a representative appointed by the
2 governor from the adult probation and parole division of the
3 corrections department who has expertise in the supervision of
4 sex offenders;

5 (11) a representative appointed by the
6 governor from the law enforcement community who has expertise
7 regarding sex offender community notification, registration,
8 tracking and monitoring;

9 (12) a representative appointed by the
10 governor who is affiliated with a civil liberties organization;
11 and

12 (13) a representative appointed by the
13 governor who is affiliated with a faith-based organization.

14 C. The sex offender management board shall report
15 its findings and recommendations to the New Mexico sentencing
16 commission on a quarterly basis. The New Mexico sentencing
17 commission shall vote to approve, disapprove or revise the
18 recommendations of the board.

19 D. The sex offender management board shall:

20 (1) hold meetings at times and for periods as
21 the board deems necessary to accomplish its objectives, but
22 shall meet at least eight times a year;

23 (2) develop and prescribe a standard procedure
24 for the identification and evaluation of convicted sex
25 offenders. The procedure shall include behavior management,

1 monitoring, treatment and program compliance for sex offenders.

2 The board shall develop and recommend measures of success;

3 (3) develop and recommend guidelines and
4 standards for the treatment of sex offenders that can be
5 utilized by offenders who are placed on probation, incarcerated
6 with the corrections department, placed on parole or placed in
7 a community corrections program. The guidelines and standards
8 shall include a monitoring process and a plan for developing
9 treatment programs for sex offenders, including determining the
10 duration, terms and conditions of probation and parole for sex
11 offenders;

12 (4) create a risk assessment-screening tool
13 and program to assist sentencing of sex offenders, including
14 determining the duration, terms and conditions of probation and
15 parole for sex offenders;

16 (5) develop guidelines and standards for
17 monitoring sex offenders who are undergoing evaluation or
18 treatment, including behavioral monitoring;

19 (6) develop criteria for measuring a sex
20 offender's progress in treatment programs. The parole board
21 shall use the criteria approved by the New Mexico sentencing
22 commission to determine whether a sex offender may
23 appropriately be discharged from parole;

24 (7) develop a standardized procedure for the
25 identification and evaluation of juvenile sex offenders. The

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1 procedure shall include behavior management, monitoring,
2 treatment and program compliance for juvenile sex offenders.

3 The board shall develop and implement measures of success;

4 (8) develop and recommend guidelines and
5 standards for the treatment of juvenile sex offenders who are
6 placed on probation, committed to a state agency, placed on
7 parole or placed in a community corrections program;

8 (9) research and analyze safety issues raised
9 when sex offenders live in a community;

10 (10) study and consider the viability and
11 legality of a civil commitment program for sex offenders;

12 (11) research and determine the feasibility
13 and legality of implementing indeterminate sentencing for sex
14 offenders;

15 (12) study the use of clinical polygraph
16 testing as a means to evaluate sex offenders;

17 (13) evaluate sex offender treatment programs
18 administered by state agencies and recommend changes, if
19 needed, in those treatment programs; and

20 (14) review the provisions of the Sex Offender
21 Notification and Registration Act and recommend changes, if
22 needed, to that act.

23 E. The members of the sex offender management board
24 shall be paid pursuant to the Per Diem and Mileage Act and
25 shall receive no other perquisite, compensation or allowance. "

1 Section 23. Section 30-4-1 NMSA 1978 (being Laws 1963,
2 Chapter 303, Section 4-1, as amended) is amended to read:

3 "30-4-1. KIDNAPPING. --

4 A. Kidnapping is the unlawful taking, restraining,
5 transporting or confining of a person, by force, intimidation
6 or deception, with intent:

7 (1) that the victim be held for ransom;

8 (2) that the victim be held as a hostage or
9 shield and confined against his will;

10 (3) that the victim be held to service against
11 the victim's will; or

12 (4) to inflict death, physical injury or a
13 sexual offense on the victim

14 B. Whoever commits kidnapping is guilty of a first
15 degree felony, except that he is guilty of a second degree
16 felony when he voluntarily frees the victim in a safe place and
17 does not inflict [~~great bodily harm~~] physical injury or a
18 sexual offense upon the victim."

19 Section 24. Section 30-9-11 NMSA 1978 (being Laws 1975,
20 Chapter 109, Section 2, as amended) is amended to read:

21 "30-9-11. CRIMINAL SEXUAL PENETRATION. --

22 A. Criminal sexual penetration is the unlawful and
23 intentional causing of a person to engage in sexual
24 intercourse, cunnilingus, fellatio or anal intercourse or the
25 causing of penetration, to any extent and with any object, of

1 the genital or anal openings of another, whether or not there
2 is any emission.

3 B. Criminal sexual penetration does not include
4 medically indicated procedures.

5 C. Criminal sexual penetration in the first degree
6 consists of all sexual penetration perpetrated:

- 7 (1) on a child under thirteen years of age; or
8 (2) by the use of force or coercion that
9 results in great bodily harm or great mental anguish to the
10 victim.

11 Whoever commits criminal sexual penetration in the first
12 degree is guilty of a first degree felony.

13 D. Criminal sexual penetration in the second degree
14 consists of all criminal sexual penetration perpetrated:

15 (1) on a child thirteen to eighteen years of
16 age when the perpetrator is in a position of authority over the
17 child and uses this authority to coerce the child to submit;

18 (2) on an inmate confined in a correctional
19 facility or jail when the perpetrator is in a position of
20 authority over the inmate;

21 (3) by the use of force or coercion that
22 results in personal injury to the victim;

23 (4) by the use of force or coercion when the
24 perpetrator is aided or abetted by one or more persons;

25 (5) in the commission of any other felony; or

1 (6) when the perpetrator is armed with a
2 deadly weapon.

3 Whoever commits criminal sexual penetration in the second
4 degree, is guilty of a second degree felony. Whoever commits
5 criminal sexual penetration in the second degree when the
6 victim is a child who is thirteen to eighteen years of age is
7 guilty of a second degree felony for a sexual offense against a
8 child and, notwithstanding the provisions of Section 31-18-15
9 NMSA 1978, shall be sentenced to a minimum term of imprisonment
10 of three years, which shall not be suspended or deferred. The
11 imposition of a minimum, mandatory term of imprisonment
12 pursuant to the provisions of this subsection shall not be
13 interpreted to preclude the imposition of sentencing
14 enhancements pursuant to the provisions of Sections 31-18-17,
15 31-18-25 and 31-18-26 NMSA 1978.

16 E. Criminal sexual penetration in the third degree
17 consists of all criminal sexual penetration perpetrated through
18 the use of force or coercion.

19 Whoever commits criminal sexual penetration in the third
20 degree is guilty of a third degree felony. Whoever commits
21 criminal sexual penetration in the third degree when the victim
22 is a child who is thirteen to eighteen years of age is guilty
23 of a third degree felony for a sexual offense against a child.

24 F. Criminal sexual penetration in the fourth degree
25 consists of all criminal sexual penetration:

1 (1) not defined in Subsections C through E of
2 this section perpetrated on a child thirteen to sixteen years
3 of age when the perpetrator is at least eighteen years of age
4 and is at least four years older than the child and not the
5 spouse of that child; or

6 (2) perpetrated on a child thirteen to
7 eighteen years of age when the perpetrator, who is a licensed
8 school employee, an unlicensed school employee, a school
9 contract employee, a school health service provider or a school
10 volunteer, and who is at least eighteen years of age and is at
11 least four years older than the child and not the spouse of
12 that child, learns while performing services in or for a school
13 that the child is a student in a school.

14 Whoever commits criminal sexual penetration in the fourth
15 degree is guilty of a fourth degree felony. "

16 Section 25. Section 30-9-13 NMSA 1978 (being Laws 1975,
17 Chapter 109, Section 4, as amended) is amended to read:

18 "30-9-13. CRIMINAL SEXUAL CONTACT OF A MINOR. --

19 A. Criminal sexual contact of a minor is the
20 unlawful and intentional touching of or applying force to the
21 intimate parts of a minor or the unlawful and intentional
22 causing of a minor to touch one's intimate parts. For the
23 purposes of this section, "intimate parts" means the primary
24 genital area, groin, buttocks, anus or breast.

25 B. Criminal sexual contact of a minor in the second

1 degree consists of all criminal sexual contact of the unclothed
2 intimate parts of a minor perpetrated:

3 (1) on a child under thirteen years of age; or

4 (2) on a child thirteen to eighteen years of
5 age when:

6 (a) the perpetrator is in a position of
7 authority over the child and uses that authority to coerce the
8 child to submit;

9 (b) the perpetrator uses force or
10 coercion that results in personal injury to the child;

11 (c) the perpetrator uses force or
12 coercion and is aided or abetted by one or more persons; or

13 (d) the perpetrator is armed with a
14 deadly weapon.

15 Whoever commits criminal sexual contact of a minor in the
16 second degree is guilty of a second degree felony for a sexual
17 offense against a child and, notwithstanding the provisions of
18 Section 31-18-15 NMSA 1978, shall be sentenced to a minimum
19 term of imprisonment of three years, which shall not be
20 suspended or deferred. The imposition of a minimum, mandatory
21 term of imprisonment pursuant to the provisions of this
22 subsection shall not be interpreted to preclude the imposition
23 of sentencing enhancements pursuant to the provisions of
24 Sections 31-18-17, 31-18-25 and 31-18-26 NMSA 1978.

25 [A-] C. Criminal sexual contact of a minor in the

1 third degree consists of all criminal sexual contact of a minor
2 perpetrated:

3 (1) on a child under thirteen years of age; or
4 (2) on a child thirteen to eighteen years of
5 age when:

6 (a) the perpetrator is in a position of
7 authority over the child and uses this authority to coerce the
8 child to submit;

9 (b) the perpetrator uses force or
10 coercion which results in personal injury to the child;

11 (c) the perpetrator uses force or
12 coercion and is aided or abetted by one or more persons; or

13 (d) the perpetrator is armed with a
14 deadly weapon.

15 Whoever commits criminal sexual contact of a minor in the
16 third degree is guilty of a third degree felony for a sexual
17 offense against a child.

18 [~~B.~~] D. Criminal sexual contact of a minor in the
19 fourth degree consists of all criminal sexual contact:

20 (1) not defined in Subsection [A] C of this
21 section, of a child thirteen to eighteen years of age
22 perpetrated with force or coercion; or

23 (2) of a minor perpetrated on a child thirteen
24 to eighteen years of age when the perpetrator, who is a
25 licensed school employee, an unlicensed school employee, a

1 school contract employee, a school health service provider or a
2 school volunteer, and who is at least eighteen years of age and
3 is at least four years older than the child and not the spouse
4 of that child, learns while performing services in or for a
5 school that the child is a student in a school.

6 Whoever commits criminal sexual contact in the fourth
7 degree is guilty of a fourth degree felony. "

8 Section 26. Section 31-18-15 NMSA 1978 (being Laws 1977,
9 Chapter 216, Section 4, as amended) is amended to read:

10 "31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--
11 BASIC SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS
12 DEDUCTIONS. --

13 A. If a person is convicted of a noncapital felony,
14 the basic sentence of imprisonment is as follows:

15 (1) for a first degree felony, eighteen years
16 imprisonment;

17 (2) for a second degree felony resulting in
18 the death of a human being, fifteen years imprisonment;

19 (3) for a second degree felony for a sexual
20 offense against a child, fifteen years imprisonment;

21 [~~3~~] (4) for a second degree felony, nine
22 years imprisonment;

23 [~~4~~] (5) for a third degree felony resulting
24 in the death of a human being, six years imprisonment;

25 (6) for a third degree felony for a sexual

underscored material = new
[bracketed material] = delete

1 offense against a child, six years imprisonment;

2 [~~(5)~~] (7) for a third degree felony, three
3 years imprisonment; or

4 [~~(6)~~] (8) for a fourth degree felony, eighteen
5 months imprisonment.

6 B. The appropriate basic sentence of imprisonment
7 shall be imposed upon a person convicted [~~of a first, second,~~
8 ~~third or fourth degree felony or a second or third degree~~
9 ~~felony resulting in the death of a human being~~] and sentenced
10 pursuant to Subsection A of this section, unless the court
11 alters [~~such~~] the sentence pursuant to the provisions of
12 Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

13 C. The court shall include in the judgment and
14 sentence of each person convicted [~~of a first, second, third or~~
15 ~~fourth degree felony or a second or third degree felony~~
16 ~~resulting in the death of a human being~~] and sentenced to
17 imprisonment in a corrections facility designated by the
18 corrections department authority for a period of parole to be
19 served in accordance with the provisions of Section 31-21-10
20 NMSA 1978 after the completion of any actual time of
21 imprisonment and authority to require, as a condition of
22 parole, the payment of the costs of parole services and
23 reimbursement to a law enforcement agency or local crime
24 stopper program in accordance with the provisions of that
25 section. The period of parole shall be deemed to be part of

1 the sentence of the convicted person in addition to the basic
2 sentence imposed pursuant to Subsection A of this section
3 together with alterations, if any, pursuant to the provisions
4 of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA
5 1978.

6 D. When a court imposes a sentence of imprisonment
7 pursuant to the provisions of Section 31-18-15.1, 31-18-16,
8 31-18-16.1 or 31-18-17 NMSA 1978 and suspends or defers the
9 basic sentence of imprisonment provided pursuant to the
10 provisions of Subsection A of this section, the period of
11 parole shall be served in accordance with the provisions of
12 Section 31-21-10 NMSA 1978 for the degree of felony for the
13 basic sentence for which the inmate was convicted. For the
14 purpose of designating a period of parole, a court shall not
15 consider that the basic sentence of imprisonment was suspended
16 or deferred and that the inmate served a period of imprisonment
17 pursuant to the provisions of Section 31-18-15.1, 31-18-16,
18 31-18-16.1 or 31-18-17 NMSA 1978.

19 E. The court may, in addition to the imposition of
20 a basic sentence of imprisonment, impose a fine not to exceed:

21 (1) for a first degree felony, fifteen
22 thousand dollars (\$15,000);

23 (2) for a second degree felony resulting in
24 the death of a human being, twelve thousand five hundred
25 dollars (\$12,500);

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1 (3) for a second degree felony for a sexual
2 offense against a child, twelve thousand five hundred dollars
3 (\$12,500);

4 [~~(3)~~] (4) for a second degree felony, ten
5 thousand dollars (\$10,000);

6 [~~(4)~~] (5) for a third degree felony resulting
7 in the death of a human being, five thousand dollars (\$5,000);

8 [or]

9 (6) for a third degree felony for a sexual
10 offense against a child, five thousand dollars (\$5,000); or

11 [~~(5)~~] (7) for a third or fourth degree felony,
12 five thousand dollars (\$5,000).

13 F. When the court imposes a sentence of
14 imprisonment for a felony offense, the court shall indicate
15 whether or not the offense is a serious violent offense, as
16 defined in Section 33-2-34 NMSA 1978. The court shall inform
17 an offender that the offender's sentence of imprisonment is
18 subject to the provisions of Sections 33-2-34, 33-2-36, 33-2-37
19 and 33-2-38 NMSA 1978. If the court fails to inform an
20 offender that the offender's sentence is subject to those
21 provisions or if the court provides the offender with erroneous
22 information regarding those provisions, the failure to inform
23 or the error shall not provide a basis for a writ of habeas
24 corpus.

25 G. No later than October 31 of each year, the New

1 Mexico sentencing commission shall provide a written report to
 2 the secretary of corrections, all New Mexico criminal court
 3 judges, the administrative office of the district attorneys and
 4 the chief public defender. The report shall specify the
 5 average reduction in the sentence of imprisonment for serious
 6 violent offenses and nonviolent offenses, as defined in Section
 7 33-2-34 NMSA 1978, due to meritorious deductions earned by
 8 prisoners during the previous fiscal year pursuant to the
 9 provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38
 10 NMSA 1978. The corrections department shall allow the
 11 commission access to documents used by the department to
 12 determine earned meritorious deductions for prisoners."

13 Section 27. Section 31-20-5 NMSA 1978 (being Laws 1963,
 14 Chapter 303, Section 29-17, as amended) is amended to read:

15 "31-20-5. PLACING DEFENDANT ON PROBATION. --

16 A. When a person has been convicted of a crime for
 17 which a sentence of imprisonment is authorized and when the
 18 magistrate, metropolitan or district court has deferred or
 19 suspended sentence, it shall order the defendant to be placed
 20 on probation for all or some portion of the period of deferment
 21 or suspension if the defendant is in need of supervision,
 22 guidance or direction that is feasible for the [~~field services~~
 23 ~~division of the~~] corrections department to furnish [~~provided,~~
 24 ~~however~~]. Except for sex offenders as provided in Section
 25 31-20-5.2 NMSA 1978, the total period of probation for district

1 court shall not exceed five years and the total period of
2 probation for the magistrate or metropolitan courts shall be no
3 longer than the maximum allowable incarceration time for the
4 offense or as otherwise provided by law.

5 B. If a defendant is required to serve a period of
6 probation subsequent to a period of incarceration:

7 (1) the period of probation shall be served
8 subsequent to any required period of parole, with the time
9 served on parole credited as time served on the period of
10 probation and the conditions of probation imposed by the court
11 deemed as additional conditions of parole; and

12 (2) in the event that the defendant violates
13 any condition of that parole, the parole board shall cause him
14 to be brought before it pursuant to the provisions of Section
15 31-21-14 NMSA 1978 and may make any disposition authorized
16 pursuant to that section and, if parole is revoked, the period
17 of parole served in the custody of a correctional facility
18 shall not be credited as time served on probation. "

19 Section 28. A new section, Section 31-20-5.2 NMSA 1978,
20 is enacted to read:

21 "31-20-5.2. [NEW MATERIAL] SEX OFFENDERS-- PERIOD OF
22 PROBATION-- TERMS AND CONDITIONS OF PROBATION. --

23 A. Prior to placing a sex offender on probation,
24 the district court shall conduct a hearing to determine the
25 duration, terms and conditions of probation for the sex

1 offender. A sex offender's initial period of probation shall
2 be for a period not to exceed twenty years. The district court
3 may consider any relevant factors, including:

4 (1) the nature and circumstances of the
5 offense for which the sex offender was convicted or
6 adjudicated;

7 (2) the nature and circumstances of a prior
8 sex offense committed by the sex offender;

9 (3) rehabilitation efforts engaged in by the
10 sex offender, including participation in treatment programs
11 while incarcerated or elsewhere;

12 (4) the danger to the community posed by the
13 sex offender; and

14 (5) a risk and needs assessment regarding the
15 sex offender, developed by the sex offender management board of
16 the New Mexico sentencing commission or another appropriate
17 entity, to be used by appropriate district court personnel.

18 B. The district court shall review the terms and
19 conditions of a sex offender's probation at two and one-half
20 year intervals. During a review hearing, the state shall bear
21 the burden of proving to the district court that a sex offender
22 should remain on probation. The district court may decide to
23 continue a sex offender's probation, but may determine that
24 certain terms and conditions of probation are no longer
25 necessary.

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1 C. The district court may order a sex offender
2 placed on probation to abide by reasonable terms and conditions
3 of probation, including:

4 (1) being subject to intensive supervision by
5 a probation officer of the corrections department;

6 (2) participating in an outpatient or
7 inpatient sex offender treatment program;

8 (3) a probationary agreement by the sex
9 offender not to use alcohol or drugs;

10 (4) a probationary agreement by the sex
11 offender not to have contact with certain persons or classes of
12 persons; and

13 (5) being subject to alcohol testing, drug
14 testing or polygraph examinations used to determine if the sex
15 offender is in compliance with the terms and conditions of his
16 probation.

17 D. The district court shall notify the sex
18 offender's counsel of record of an upcoming probation hearing
19 for a sex offender, and the sex offender's counsel of record
20 shall represent the sex offender at the probation hearing.

21 When a sex offender's counsel of record provides the court with
22 good cause that the counsel of record should not represent the
23 sex offender at the probation hearing and the sex offender is
24 subsequently unable to obtain counsel, the district court shall
25 notify the chief public defender of the upcoming probation

1 hearing and the chief public defender shall make representation
2 available to the sex offender at that hearing.

3 E. If the district court finds that a sex offender
4 has violated the terms and conditions of his probation, the
5 district court may revoke his probation or may order additional
6 terms and conditions of probation.

7 F. As used in this section, "sex offender" means a
8 person who is convicted of, pleads guilty to or pleads nolo
9 contendere to any one of the following offenses:

10 (1) kidnapping, as provided in Section 30-4-1
11 NMSA 1978, when committed with intent to inflict a sexual
12 offense upon the victim;

13 (2) criminal sexual penetration in the first,
14 second or third degree, as provided in Section 30-9-11 NMSA
15 1978;

16 (3) criminal sexual contact of a minor in the
17 second or third degree, as provided in Section 30-9-13 NMSA
18 1978;

19 (4) sexual exploitation of children in the
20 second degree, as provided in Section 30-6A-3 NMSA 1978; or

21 (5) sexual exploitation of children by
22 prostitution in the first or second degree, as provided in
23 Section 30-6A-4 NMSA 1978. "

24 Section 29. Section 31-21-10 NMSA 1978 (being Laws 1980,
25 Chapter 28, Section 1, as amended) is amended to read:

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1 "31-21-10. PAROLE AUTHORITY AND PROCEDURE. -

2 A. A person sentenced as a result of a conviction
3 for committing criminal sexual penetration in the first degree
4 when the victim is a child less than thirteen years of age may
5 be paroled pursuant to the applicable provisions of law, but
6 the term of parole shall be for the life of the person paroled.

7 ~~[A.]~~ B. Except as provided in Subsection A of this
8 section, an inmate of an institution who was sentenced to life
9 imprisonment as the result of the commission of a capital
10 felony, who was convicted of three violent felonies and
11 sentenced pursuant to Sections 31-18-23 and 31-18-24 NMSA 1978
12 or who was convicted of two violent sexual offenses and
13 sentenced pursuant to Subsection A of Section 31-18-25 NMSA
14 1978 and Section 31-18-26 NMSA 1978 becomes eligible for a
15 parole hearing after he has served thirty years of his
16 sentence. Before ordering the parole of an inmate sentenced to
17 life imprisonment, the board shall:

18 (1) interview the inmate at the institution
19 where he is committed;

20 (2) consider all pertinent information
21 concerning the inmate, including:

22 (a) the circumstances of the offense;
23 (b) mitigating and aggravating
24 circumstances;

25 (c) whether a deadly weapon was used in

1 the commission of the offense;

2 (d) whether the inmate is a habitual
3 offender;

4 (e) the reports filed under Section
5 31-21-9 NMSA 1978; and

6 (f) the reports of such physical and
7 mental examinations as have been made while in ~~[prison]~~ an
8 institution;

9 (3) make a finding that a parole is in the
10 best interest of society and the inmate; and

11 (4) make a finding that the inmate is able and
12 willing to fulfill the obligations of a law-abiding citizen.

13 If parole is denied, the inmate sentenced to life
14 imprisonment shall again become entitled to a parole hearing at
15 two-year intervals. The board may, on its own motion, reopen
16 any case in which a hearing has already been granted and parole
17 denied.

18 ~~[B-]~~ C. Unless the board finds that it is in the
19 best interest of society and the parolee to reduce the period
20 of parole, a person who was convicted of a capital felony shall
21 be required to undergo a minimum period of parole of five
22 years. During the period of parole, the person shall be under
23 the guidance and supervision of the board.

24 ~~[C-]~~ D. Except for sex offenders as provided in
25 Subsection A of this section and Section 31-21-10.1 NMSA 1978,

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1 an inmate who was convicted of a first, second or third degree
2 felony and who has served the sentence of imprisonment imposed
3 by the court in [~~a corrections facility~~] an institution
4 designated by the corrections department shall be required to
5 undergo a two-year period of parole. An inmate who was
6 convicted of a fourth degree felony and who has served the
7 sentence of imprisonment imposed by the court in [~~a corrections~~
8 ~~facility~~] an institution designated by the corrections
9 department shall be required to undergo a one-year period of
10 parole. During the period of parole, the person shall be under
11 the guidance and supervision of the board.

12 [D.—Every] E. A person while on parole shall
13 remain in the legal custody of the institution from which he
14 was released, but shall be subject to the orders of the board.
15 The board shall furnish to each inmate as a prerequisite to his
16 release under its supervision a written statement of the
17 conditions of parole that shall be accepted and agreed to by
18 the inmate as evidenced by his signature affixed to a duplicate
19 copy to be retained in the files of the board. The board shall
20 also require as a prerequisite to release the submission and
21 approval of a parole plan. If an inmate refuses to affix his
22 signature to the written statement of the conditions of his
23 parole or does not have an approved parole plan, he shall not
24 be released and shall remain in the custody of the [~~corrections~~
25 ~~facility~~] institution in which he has served his sentence,

1 excepting parole, until such time as the period of parole he
 2 was required to serve, less meritorious deductions, if any,
 3 expires, at which time he shall be released from that
 4 ~~[facility]~~ institution without parole, or until such time that
 5 he evidences his acceptance and agreement to the conditions of
 6 parole as required or receives approval for his parole plan or
 7 both. Time served from the date that an inmate refuses to
 8 accept and agree to the conditions of parole or fails to
 9 receive approval for his parole plan shall reduce the period,
 10 if any, to be served under parole at a later date. If the
 11 district court has ordered that the inmate make restitution to
 12 a victim as provided in Section 31-17-1 NMSA 1978, the board
 13 shall include restitution as a condition of parole. The board
 14 shall also personally apprise the inmate of the conditions of
 15 parole and his duties relating thereto.

16 ~~[E.]~~ F. Except as provided in Subsection A of this
 17 section, when a person on parole has performed the obligations
 18 of his release for the period of parole provided in this
 19 section, the board shall make a final order of discharge and
 20 issue him a certificate of discharge.

21 ~~[F.]~~ G. Pursuant to the provisions of Section
 22 31-18-15 NMSA 1978, the board shall require the inmate as a
 23 condition of parole:

24 (1) to pay the actual costs of his parole
 25 services to the adult probation and parole division of the

1 corrections department for deposit to the corrections
2 department intensive supervision fund not exceeding one
3 thousand twenty dollars (\$1,020) annually to be paid in monthly
4 installments of not less than fifteen dollars (\$15.00) and not
5 more than eighty-five dollars (\$85.00), subject to modification
6 by the adult probation and parole division on the basis of
7 changed financial circumstances; and

8 (2) to reimburse a law enforcement agency or
9 local crime stopper program for the amount of any reward paid
10 by the agency or program for information leading to his arrest,
11 prosecution or conviction.

12 [~~G.~~] H. The provisions of this section shall apply
13 to all inmates except geriatric, permanently incapacitated and
14 terminally ill inmates eligible for the medical and geriatric
15 parole program as provided by the Parole Board Act. "

16 Section 30. A new section of the Probation and Parole
17 Act, Section 31-21-10.1 NMSA 1978, is enacted to read:

18 "31-21-10.1. [NEW MATERIAL] SEX OFFENDERS--PERIOD OF
19 PAROLE--TERMS AND CONDITIONS OF PAROLE.--

20 A. Prior to the release on parole of a sex
21 offender, with the exception of a person sentenced as a result
22 of a conviction for committing criminal sexual penetration in
23 the first degree when the victim is a child less than thirteen
24 years of age, the board shall conduct a hearing to determine
25 the duration, terms and conditions of parole for the sex

1 offender. A sex offender's initial period of parole shall be
2 for a period not to exceed twenty years. The board may
3 consider any relevant factors, including:

4 (1) the nature and circumstances of the
5 offense for which the sex offender was incarcerated;

6 (2) the nature and circumstances of a prior
7 sex offense committed by the sex offender;

8 (3) rehabilitation efforts engaged in by the
9 sex offender, including participation in treatment programs
10 while incarcerated or elsewhere;

11 (4) the danger to the community posed by the
12 sex offender; and

13 (5) a risk and needs assessment regarding the
14 sex offender, developed by the sex offender management board of
15 the New Mexico sentencing commission or another appropriate
16 entity, to be used by appropriate parole board personnel.

17 B. The board shall review the terms and conditions
18 of a sex offender's parole at two and one-half year intervals.
19 During a review hearing, the state shall bear the burden of
20 proving to the board that a sex offender should remain on
21 parole. The board may decide to continue a sex offender's
22 parole, but may determine that certain terms and conditions of
23 parole are no longer necessary.

24 C. The board may order a sex offender released on
25 parole to abide by reasonable terms and conditions of parole,

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1 including:

2 (1) being subject to intensive supervision by
3 a parole officer of the corrections department;

4 (2) participating in an outpatient or
5 inpatient sex offender treatment program;

6 (3) a parole agreement by the sex offender not
7 to use alcohol or drugs;

8 (4) a parole agreement by the sex offender not
9 to have contact with certain persons or classes of persons; and

10 (5) being subject to alcohol testing, drug
11 testing or polygraph examinations used to determine if the sex
12 offender is in compliance with the terms and conditions of his
13 parole.

14 D. The board shall notify the chief public defender
15 of an upcoming parole hearing for a sex offender, and the chief
16 public defender shall make representation available to the sex
17 offender at the parole hearing.

18 E. If the board finds that a sex offender has
19 violated the terms and conditions of his parole, the board may
20 revoke his parole or may order additional terms and conditions
21 of parole.

22 F. A person sentenced as a result of a conviction
23 for committing criminal sexual penetration in the first degree
24 when the victim is a child less than thirteen years of age may
25 be paroled pursuant to the applicable provisions of law, but

1 the term of parole shall be for the life of the person paroled.

2 G. The provisions of this section shall apply to
3 all sex offenders, except geriatric, permanently incapacitated
4 and terminally ill inmates eligible for the medical and
5 geriatric parole program as provided by the Parole Board Act.

6 H. As used in this section, "sex offender" means a
7 person who is convicted of, pleads guilty to or pleads nolo
8 contendere to any one of the following offenses:

9 (1) kidnapping, as provided in Section 30-4-1
10 NMSA 1978, when committed with intent to inflict a sexual
11 offense upon the victim;

12 (2) criminal sexual penetration in the first,
13 second or third degree, as provided in Section 30-9-11 NMSA
14 1978;

15 (3) criminal sexual contact of a minor in the
16 second or third degree, as provided in Section 30-9-13 NMSA
17 1978;

18 (4) sexual exploitation of children in the
19 second degree, as provided in Section 30-6A-3 NMSA 1978; or

20 (5) sexual exploitation of children by
21 prostitution in the first or second degree, as provided in
22 Section 30-6A-4 NMSA 1978. "

23 Section 31. Section 29-11A-2 NMSA 1978 (being Laws 1995,
24 Chapter 106, Section 2, as amended) is amended to read:

25 "29-11A-2. FINDINGS--PURPOSE. --

1 A. The legislature finds that:

2 (1) sex offenders pose a significant risk of
3 recidivism; and

4 (2) the efforts of law enforcement agencies to
5 protect their communities from sex offenders are impaired by
6 the lack of information available concerning convicted sex
7 offenders who live within the agencies' jurisdictions.

8 B. The purpose of the Sex Offender Registration and
9 Notification Act is to assist law enforcement agencies' efforts
10 to protect their communities by:

11 (1) requiring a sex ~~[offenders]~~ offender who
12 ~~[are residents]~~ is a resident of New Mexico to register with
13 the ~~[county]~~ sheriff of the county in which the sex offender
14 resides;

15 (2) requiring a sex ~~[offenders]~~ offender who
16 ~~[are residents]~~ is a resident in ~~[other states]~~ another state,
17 but who ~~[are]~~ is employed in New Mexico, ~~[or who attend]~~
18 attends school in New Mexico or visits New Mexico for more than
19 twenty-four hours, to register with the ~~[county]~~ sheriff of the
20 county in which the sex offender works, ~~[or]~~ attends school or
21 visits;

22 (3) requiring the establishment of a central
23 registry for sex offenders; and

24 (4) providing public access to information
25 regarding certain registered sex offenders. "

underscored material = new
[bracketed material] = delete

1 Section 32. Section 29-11A-3 NMSA 1978 (being Laws 1995,
2 Chapter 106, Section 3, as amended) is amended to read:

3 "29-11A-3. DEFINITIONS. -- As used in the Sex Offender
4 Registration and Notification Act:

5 A. "sex offender" means a person [~~eighteen years of~~
6 ~~age or older~~] who:

7 (1) is a resident of New Mexico who is
8 convicted of a sex offense in New Mexico;

9 (2) changes his residence to New Mexico, when
10 that person has been convicted of a sex offense in another
11 state pursuant to state, federal or military law;

12 (3) is a resident of New Mexico who is
13 convicted of a sex offense pursuant to federal or military law;
14 or

15 (4) is a resident of another state and who has
16 been convicted of a sex offense pursuant to state, federal or
17 military law, but who is:

18 (a) employed full time or part time in
19 New Mexico for a period of time exceeding fourteen days or for
20 an aggregate period of time exceeding thirty days during any
21 calendar year; [~~or~~]

22 (b) enrolled on a full-time or part-time
23 basis in a private or public school in New Mexico, including a
24 secondary school, a trade school, a professional institution or
25 an institution of higher education; [~~and~~] or

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underscored material = new
[bracketed material] = delete

1 Section 30-9-1 NMSA 1978;

2 [~~8~~] (10) solicitation to commit criminal
3 sexual contact of a minor in the second, third or fourth
4 degree, as provided in Sections 30-9-13 and 30-28-3 NMSA 1978;
5 or

6 [~~9~~] (11) attempt to commit any of the sex
7 offenses set forth in Paragraphs (1) through [~~7~~] (8) of this
8 subsection, as provided in Section 30-28-1 NMSA 1978. "

9 Section 33. Section 29-11A-4 NMSA 1978 (being Laws 1995,
10 Chapter 106, Section 4, as amended) is amended to read:

11 "29-11A-4. REGISTRATION OF SEX OFFENDERS-- INFORMATION
12 REQUIRED-- CRIMINAL PENALTY FOR NONCOMPLIANCE. --

13 A. A sex offender residing in this state shall
14 register with the [~~county~~] sheriff for the county in which the
15 sex offender resides.

16 B. A sex offender who is a current resident of New
17 Mexico shall register with the county sheriff no later than
18 [~~ten days~~] twenty-four hours after being released from the
19 custody of the corrections department or being placed on
20 probation or parole. A sex offender who changes his residence
21 to New Mexico shall register with the county sheriff no later
22 than [~~ten days~~] twenty-four hours after establishing residence
23 in this state. When a sex offender registers with the county
24 sheriff, he shall provide the following registration
25 information:

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underscored material = new
[bracketed material] = delete

- 1 (1) his legal name and any other names or
2 aliases that he is using or has used;
- 3 (2) his date of birth;
- 4 (3) his social security number;
- 5 (4) [~~his current address~~] all residences he
6 owns, specifying which address is his primary residence;
- 7 (5) his motor vehicle registration information
8 with a description of all motor vehicles owned;
- 9 [~~(5)~~] (6) his place of employment;
- 10 [~~(6)~~] (7) the sex offense for which he was
11 convicted; and
- 12 [~~(7)~~] (8) the date and place of his sex
13 offense conviction.

14 C. A sex offender who is a resident of another
15 state but who is employed in New Mexico, [~~or~~] attending school
16 in New Mexico or visiting New Mexico shall register with the
17 [~~county~~] sheriff for the county in which the sex offender is
18 working, [~~or~~] attending school or visiting.

19 D. A sex offender who is a resident of another
20 state but who is employed in New Mexico, [~~or~~] attending school
21 in New Mexico or visiting New Mexico shall register with the
22 county sheriff no later than [~~ten days~~] twenty-four hours after
23 beginning work, [~~or~~] school or his visit. When the sex
24 offender registers with the county sheriff, he shall provide
25 the following registration information:

1 (1) his legal name and any other names or
2 aliases that he is using or has used;

3 (2) his date of birth;

4 (3) his social security number;

5 (4) his current address in his state of
6 residence and, if applicable, the address of his place of
7 lodging in New Mexico while he is working, ~~[or]~~ attending
8 school or visiting;

9 (5) his motor vehicle registration information
10 and a description of all motor vehicles owned or that will be
11 used in New Mexico by him while he is working, attending school
12 or visiting;

13 ~~[(5)]~~ (6) his place of employment or the name
14 of the school he is attending;

15 ~~[(6)]~~ (7) the sex offense for which he was
16 convicted; and

17 ~~[(7)]~~ (8) the date and place of his sex
18 offense conviction.

19 E. When a sex offender registers with a county
20 sheriff, the sheriff shall obtain:

21 (1) a photograph of the sex offender and a
22 complete set of the sex offender's fingerprints; and

23 (2) a description of any tattoos, scars or
24 other distinguishing features on the sex offender's body that
25 would assist in identifying the sex offender.

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1 F. When a sex offender who is registered changes
2 his residence within the same county, the sex offender shall
3 send written notice of his change of address to the county
4 sheriff [~~no later than ten days after~~] prior to establishing
5 his new residence.

6 G. When a sex offender who is registered changes
7 his residence to a new county in New Mexico, the sex offender
8 shall register with the [eounty] sheriff of the new county no
9 later than [~~ten days~~] twenty-four hours after establishing his
10 new residence. The sex offender shall also send written notice
11 of the change in residence to the county sheriff with whom he
12 last registered no later than [~~ten days~~] twenty-four hours
13 after establishing his new residence, including proof of the
14 new residence.

15 H. Following his initial registration pursuant to
16 the provisions of this section:

17 (1) a sex offender required to register
18 pursuant to the provisions of Subsection D of Section 29-11A-5
19 NMSA 1978 shall [~~annually~~] renew his registration with the
20 county sheriff [~~prior to December 31 of each subsequent~~
21 ~~calendar year for a period of twenty years~~] every ninety days
22 following his initial registration for the entirety of his
23 natural life; and

24 (2) a sex offender required to register
25 pursuant to the provisions of Subsection E of Section 29-11A-5

1 NMSA 1978 shall [~~annually~~] renew his registration with the
 2 county sheriff [~~prior to December 31 of each subsequent~~
 3 ~~calendar year~~] every ninety days following his initial
 4 registration for a period of [~~ten~~] twenty years.

5 I. A sex offender who willfully fails to comply
 6 with the registration requirements set forth in this section is
 7 guilty of a fourth degree felony and shall be sentenced
 8 pursuant to the provisions of Section 31-18-15 NMSA 1978.

9 J. A sex offender who willfully provides false
 10 information when complying with the registration requirements
 11 set forth in this section is guilty of a fourth degree felony
 12 and shall be sentenced pursuant to the provisions of Section
 13 31-18-15 NMSA 1978. "

14 Section 34. Section 29-11A-4.1 NMSA 1978 (being Laws
 15 2000, Chapter 8, Section 6) is amended to read:

16 "29-11A-4.1. PROCEDURES WHEN A SEX OFFENDER MOVES FROM
 17 NEW MEXICO TO ANOTHER STATE. --

18 A. If a sex offender intends to move from New
 19 Mexico to another state, no later than thirty days prior to
 20 moving to the other state, he shall:

21 (1) notify the [~~county~~] sheriff of the county
 22 he resides in that he is moving to the other state; and

23 (2) provide the county sheriff with a written
 24 notice that identifies the [~~state~~] new address of the residence
 25 to which the sex offender is moving.

1 B. Within five days of receiving a sex offender's
2 written notice of intent to move to another state, the county
3 sheriff shall transmit that information to the department of
4 public safety. Within five days of receiving that information
5 from a county sheriff, the department shall contact the state
6 agency responsible for registering sex offenders in the state
7 to which the sex offender is moving. The department shall
8 provide that state agency with registration information
9 regarding the sex offender. The department shall also obtain
10 information regarding registration requirements for sex
11 offenders in the state to which the sex offender is moving.
12 The department shall provide the sex offender with written
13 notification of the registration requirements in the state to
14 which the sex offender is moving.

15 C. A sex offender who willfully fails to comply
16 with the requirements set forth in this section is guilty of a
17 [~~misdeemeanor~~] fourth degree felony and shall be punished by
18 imprisonment for a definite term [~~less than~~] of one year or a
19 fine of not more than one thousand dollars (\$1,000) or both. "

20 Section 35. Section 29-11A-5 NMSA 1978 (being Laws 1995,
21 Chapter 106, Section 5, as amended) is amended to read:

22 "29-11A-5. LOCAL REGISTRY--CENTRAL REGISTRY--
23 ADMINISTRATION BY DEPARTMENT OF PUBLIC SAFETY--PARTICIPATION IN
24 THE NATIONAL SEX OFFENDER REGISTRY--RULES.--

25 A. A county sheriff shall maintain a local registry

1 of sex offenders in his jurisdiction required to register
2 pursuant to the provisions of the Sex Offender Registration and
3 Notification Act.

4 B. The county sheriff shall forward registration
5 information obtained from sex offenders to the department of
6 public safety. The initial registration information and any
7 new registration information subsequently obtained from a sex
8 offender shall be forwarded by the county sheriff no later than
9 ten working days after the information is obtained from a sex
10 offender. If the department of public safety receives
11 information regarding a sex offender from a governmental entity
12 other than a county sheriff, the department shall send that
13 information to the [county] sheriff for the county in which the
14 sex offender resides.

15 C. The department of public safety shall maintain a
16 central registry of sex offenders required to register pursuant
17 to the provisions of the Sex Offender Registration and
18 Notification Act. The department shall participate in the
19 national sex offender registry administered by the United
20 States department of justice. The department shall send
21 conviction information and fingerprints for all sex offenders
22 registered in New Mexico to the national sex offender registry
23 administered by the United States department of justice and to
24 the federal bureau of investigation.

25 D. The department of public safety shall retain

1 registration information regarding sex offenders convicted for
2 the following sex offenses for [~~a period of twenty years~~
3 ~~following the sex offender's conviction, release from prison or~~
4 ~~release from probation or parole, whichever occurs later]~~ the
5 entirety of the sex offender's natural life:

6 (1) criminal sexual penetration in the first
7 or second degree, as provided in Section 30-9-11 NMSA 1978;

8 (2) criminal sexual contact of a minor in the
9 second or third degree, as provided in Section 30-9-13 NMSA
10 1978;

11 (3) sexual exploitation of children, as
12 provided in [~~Subsection A, B or C of~~] Section 30-6A-3 NMSA
13 1978;

14 (4) kidnapping, as provided in Section
15 30-4-1 NMSA 1978, when the victim is less than eighteen years
16 of age and the offender is not a parent of the victim; [~~or~~]

17 (5) aggravated indecent exposure, as provided
18 in Section 30-9-14.3 NMSA 1978;

19 (6) enticement of a child, as provided in
20 Section 30-9-1 NMSA 1978; or

21 [~~(5)~~] (7) attempt to commit any of the sex
22 offenses set forth in Paragraphs (1) through [~~(4)~~] (5) of this
23 subsection, as provided in Section 30-28-1 NMSA 1978.

24 E. The department of public safety shall retain
25 registration information regarding sex offenders convicted for

1 the following offenses for a period of [~~ten~~] twenty years
 2 following the sex offender's conviction, release from prison or
 3 release from probation or parole, whichever occurs later:

4 (1) criminal sexual penetration in the third
 5 or fourth degree, as provided in Section 30-9-11 NMSA 1978;

6 (2) criminal sexual contact in the fourth
 7 degree, as provided in Section 30-9-12 NMSA 1978;

8 (3) criminal sexual contact of a minor in the
 9 fourth degree, as provided in Section 30-9-13 NMSA 1978;

10 (4) sexual exploitation of children by
 11 prostitution, as provided in Section 30-6A-4 NMSA 1978;

12 (5) false imprisonment, as provided in Section
 13 30-4-3 NMSA 1978, when the victim is less than eighteen years
 14 of age and the offender is not a parent of the victim;

15 (6) solicitation to commit criminal sexual
 16 contact of a minor in the second, third or fourth degree, as
 17 provided in Sections 30-9-13 and 30-28-3 NMSA 1978; or

18 (7) attempt to commit any of the sex offenses
 19 set forth in Paragraphs (1) through (5) of this subsection, as
 20 provided in Section 30-28-1 NMSA 1978.

21 F. The department of public safety shall adopt
 22 rules necessary to carry out the provisions of the Sex Offender
 23 Registration and Notification Act. "

24 Section 36. Section 29-11A-5.1 NMSA 1978 (being Laws
 25 1999, Chapter 19, Section 8, as amended) is amended to read:

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1 "29-11A-5.1. PUBLIC ACCESS TO INFORMATION REGARDING
2 CERTAIN REGISTERED SEX OFFENDERS--ACTIVE COMMUNITY
3 NOTIFICATION--INTERNET WEB SITE.--

4 A. If a sex offender is convicted of one of the
5 following sex offenses, the county sheriff shall forward
6 registration information obtained from the sex offender to the
7 district attorney for the judicial district in which the sex
8 offender resides and, if the sex offender is a resident of a
9 municipality, the chief law enforcement officer for the
10 municipality in which the sex offender resides:

11 (1) criminal sexual penetration in the first,
12 [~~or~~] second or third degree, as provided in Section 30-9-11
13 NMSA 1978;

14 (2) criminal sexual contact of a minor in the
15 second, third or fourth degree, as provided in Section 30-9-13
16 NMSA 1978;

17 (3) sexual exploitation of children, as
18 provided in [~~Subsection A, B or C of~~] Section 30-6A-3 NMSA
19 1978;

20 (4) sexual exploitation of children by
21 prostitution, as provided in Section 30-6A-4 NMSA 1978; or

22 (5) attempt to commit any of the sex offenses
23 set forth in Paragraphs (1) through (4) of this subsection, as
24 provided in Section 30-28-1 NMSA 1978.

25 B. A person who wants to obtain registration

1 information regarding sex offenders described in Subsection A
2 of this section may request that information from the:

3 (1) ~~county~~ sheriff for the county in which
4 the sex offenders reside;

5 (2) chief law enforcement officer for the
6 municipality in which the sex offenders reside;

7 (3) district attorney for the judicial
8 district in which the sex offenders reside; or

9 (4) secretary of public safety.

10 C. Upon receiving a request for registration
11 information regarding sex offenders described in Subsection A
12 of this section, the county sheriff, chief municipal law
13 enforcement officer, district attorney or secretary of public
14 safety shall provide that registration information, with the
15 exception of a sex offender's social security number, within a
16 reasonable period of time, and no later than seven days after
17 receiving the request.

18 D. Within seven days of receiving registration
19 information from a sex offender described in Subsection A of
20 this section, the county sheriff shall contact every licensed
21 daycare center, elementary school, middle school and high
22 school within a one-mile radius of the sex offender's residence
23 and provide them with the sex offender's registration
24 information, with the exception of the sex offender's social
25 security number.

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1 E. The department of public safety [~~may~~] shall
2 establish and ~~manage~~ an internet web site that provides the
3 public with registration information regarding sex offenders
4 described in Subsection A of this section. The registration
5 information provided to the public pursuant to this subsection
6 shall not include a sex offender's social security number or a
7 sex offender's place of employment, unless the sex offender's
8 employment requires him to have direct contact with children. "

9 Section 37. Section 33-2-34 NMSA 1978 (being Laws 1999,
10 Chapter 238, Section 1) is amended to read:

11 "33-2-34. ELIGIBILITY FOR EARNED MERITORIOUS
12 DEDUCTIONS. --

13 A. To earn meritorious deductions, a prisoner
14 confined in a correctional facility designated by the
15 corrections department ~~must~~ be an active participant in
16 programs ~~recommended~~ for the prisoner by the classification
17 committee and approved by the warden. Meritorious deductions
18 shall not exceed the following amounts:

19 (1) for a prisoner confined for ~~committing~~ a
20 serious violent offense, up to a ~~maximum~~ of four days per month
21 of time served;

22 (2) for a prisoner confined for ~~committing~~ a
23 nonviolent offense, up to a ~~maximum~~ of thirty days per month of
24 time served;

25 (3) for a prisoner confined following

1 revocation of parole for the alleged commission of a new felony
2 offense or for absconding from parole, up to a maximum of four
3 days per month of time served during the parole term following
4 revocation; and

5 (4) for a prisoner confined following
6 revocation of parole for a reason other than the alleged
7 commission of a new felony offense or absconding from parole,
8 up to a maximum of eight days per month of time served during
9 the parole term following revocation.

10 B. A prisoner may earn meritorious deductions upon
11 recommendation by the classification committee, based upon the
12 prisoner's active participation in approved programs and the
13 quality of the prisoner's participation in those approved
14 programs. A prisoner may not earn meritorious deductions
15 unless the recommendation of the classification committee is
16 approved by the warden.

17 C. If a prisoner's active participation in approved
18 programs is interrupted by a lockdown at a correctional
19 facility, he may continue to be awarded meritorious deductions
20 at the rate he was earning meritorious deductions prior to the
21 lockdown, unless the warden determines that the prisoner's
22 conduct contributed to the initiation or continuance of the
23 lockdown.

24 D. A prisoner confined in a correctional facility
25 designated by the corrections department is eligible for lump-

1 sum meritorious deductions as follows:

2 (1) for successfully completing an approved
3 vocational, substance abuse or mental health program, one
4 month; except when the prisoner has a demonstrable physical,
5 mental health or developmental disability that prevents the
6 prisoner from successfully earning a general education diploma,
7 in which case the prisoner shall be awarded three months;

8 (2) for earning a general education diploma,
9 three months;

10 (3) for earning an associate's degree, four
11 months;

12 (4) for earning a bachelor's degree, five
13 months;

14 (5) for earning a graduate qualification, five
15 months; and

16 (6) for engaging in a heroic act of saving
17 life or property, engaging in extraordinary conduct for the
18 benefit of the state or the public that is at great expense,
19 risk or effort on behalf of the inmate, or engaging in
20 extraordinary conduct far in excess of normal program
21 assignments that demonstrates the prisoner's commitment to
22 rehabilitate himself. The classification committee and the
23 warden may recommend the number of days to be awarded in each
24 case based upon the particular merits, but any award shall be
25 determined by the director of the adult institutions division

1 of the corrections department.

2 E. Lump-sum meritorious deductions, provided in
3 Paragraphs (1) through (6) of Subsection D of this section, may
4 be awarded in addition to the meritorious deductions provided
5 in Subsections A and B of this section. Lump-sum meritorious
6 deductions shall not exceed one year per award and shall not
7 exceed a total of one year for all lump-sum meritorious
8 deductions awarded in any consecutive twelve-month period.

9 F. A prisoner is not eligible to earn meritorious
10 deductions if the prisoner:

11 (1) disobeys an order to perform labor,
12 pursuant to Section 33-8-4 NMSA 1978;

13 (2) is in disciplinary segregation;

14 (3) is within the first sixty days of receipt
15 by the corrections department; or

16 (4) is not an active participant in programs
17 recommended and approved for him by the classification
18 committee.

19 G. The provisions of this section shall not be
20 interpreted as providing eligibility to earn meritorious
21 deductions from a sentence of life imprisonment or a sentence
22 of death.

23 H. The corrections department shall promulgate
24 rules to implement the provisions of this section, and the
25 rules shall be matters of public record. A concise summary of

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1 the rules shall be provided to each prisoner, and each prisoner
2 shall receive a quarterly statement of the meritorious
3 deductions earned.

4 I. A New Mexico prisoner confined in a federal or
5 out-of-state correctional facility is eligible to earn
6 meritorious deductions for active participation in programs on
7 the basis of the prisoner's conduct and program reports
8 furnished by that facility to the corrections department. All
9 decisions regarding the award and forfeiture of meritorious
10 deductions at such facility are subject to final approval by
11 the director of the adult institutions division of the
12 corrections department or ~~his~~ the director's designee.

13 J. In order to be eligible for meritorious
14 deductions, a prisoner confined in a federal or out-of-state
15 correctional facility designated by the corrections department
16 must actively participate in programs that are available. If a
17 federal or out-of-state correctional facility does not have
18 programs available for a prisoner, the prisoner may be awarded
19 meritorious deductions at the rate the prisoner could have
20 earned meritorious deductions if the prisoner had actively
21 participated in programs.

22 K. A prisoner confined in a correctional facility
23 in New Mexico that is operated by a private company, pursuant
24 to a contract with the corrections department, is eligible to
25 earn meritorious deductions in the same manner as a prisoner

1 confined in state-run correctional facilities. All decisions
2 regarding the award or forfeiture of meritorious deductions at
3 such facilities are subject to final approval by the director
4 of the adult institutions division of the corrections
5 department or ~~[his]~~ the director's designee.

6 L. As used in this section:

7 (1) "active participant" means a prisoner who
8 has begun, and is regularly engaged in, approved programs;

9 (2) "program" means work, vocational,
10 educational, substance abuse and mental health programs,
11 approved by the classification committee, that contribute to a
12 prisoner's self-betterment through the development of personal
13 and occupational skills. "Program" does not include
14 recreational activities;

15 (3) "nonviolent offense" means any offense
16 other than a serious violent offense; and

17 (4) "serious violent offense" means:

18 (a) second degree murder, as provided in
19 Section 30-2-1 NMSA 1978;

20 (b) voluntary manslaughter, as provided
21 in Section 30-2-3 NMSA 1978;

22 (c) third degree aggravated battery, as
23 provided in Section 30-3-5 NMSA 1978;

24 (d) first degree kidnapping, as provided
25 in Section 30-4-1 NMSA 1978;

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1 (e) first and second degree criminal
2 sexual penetration, as provided in Section 30-9-11 NMSA 1978;

3 (f) second and third degree criminal
4 sexual contact of a minor, as provided in Section 30-9-13 NMSA
5 1978;

6 (g) first and second degree robbery, as
7 provided in Section 30-16-2 NMSA 1978;

8 (h) second degree aggravated arson, as
9 provided in Section 30-17-6 NMSA 1978;

10 (i) shooting at a dwelling or occupied
11 building, as provided in Section 30-3-8 NMSA 1978;

12 (j) shooting at or from a motor vehicle,
13 as provided in Section 30-3-8 NMSA 1978;

14 (k) aggravated battery upon a peace
15 officer, as provided in Section 30-22-25 NMSA 1978;

16 (l) assault with intent to commit a
17 violent felony upon a peace officer, as provided in Section
18 30-22-23 NMSA 1978;

19 (m) aggravated assault upon a peace
20 officer, as provided in Section 30-22-22 NMSA 1978; and

21 (n) any of the following offenses, when
22 the nature of the offense and the resulting harm are such that
23 the court judges the crime to be a serious violent offense for
24 the purpose of this section: 1) involuntary manslaughter, as
25 provided in Section 30-2-3 NMSA 1978; 2) fourth degree

1 aggravated assault, as provided in Section 30-3-2 NMSA 1978; 3)
 2 third degree assault with intent to commit a violent felony, as
 3 provided in Section 30-3-3 NMSA 1978; 4) third and fourth
 4 degree aggravated stalking, as provided in Section 30-3A-3.1
 5 NMSA 1978; 5) second degree kidnapping, as provided in Section
 6 30-4-1 NMSA 1978; 6) second degree abandonment of a child, as
 7 provided in Section 30-6-1 NMSA 1978; 7) first, second and
 8 third degree abuse of a child, as provided in Section 30-6-1
 9 NMSA 1978; 8) third degree dangerous use of explosives, as
 10 provided in Section 30-7-5 NMSA 1978; 9) third and fourth
 11 degree criminal sexual penetration, as provided in Section
 12 30-9-11 NMSA 1978; 10) fourth degree criminal sexual contact of
 13 a minor, as provided in Section 30-9-13 NMSA 1978; 11) third
 14 degree robbery, as provided in Section 30-16-2 NMSA 1978; 12)
 15 third degree homicide by vehicle or great bodily injury by
 16 vehicle, as provided in Section 66-8-101 NMSA 1978; and 13)
 17 battery upon a peace officer, as provided in Section 30-22-24
 18 NMSA 1978. "

19 Section 38. A new section of the Criminal Sentencing Act
 20 is enacted to read:

21 "[NEW MATERIAL] SENTENCING OF PERSONS CONVICTED OF CERTAIN
 22 SEXUAL OFFENSES AGAINST CHILDREN LESS THAN THIRTEEN YEARS OF
 23 AGE-- TREATMENT WITH MEDROXYPROGESTERONE ACETATE OR ITS
 24 EQUIVALENT. --

25 A. A person convicted of criminal sexual

1 penetration in the first degree when the victim is a child less
2 than thirteen years of age shall, if paroled, undergo
3 medroxyprogesterone acetate treatment or its chemical
4 equivalent, in addition to any other treatment or punishment
5 prescribed for that offense by the sentencing court.

6 B. A person required to undergo treatment pursuant
7 to Subsection A of this section:

8 (1) shall be exempt from that treatment if he
9 has undergone or does undergo a permanent surgical alternative
10 to hormonal chemical treatment for sex offenders; and

11 (2) shall begin medroxyprogesterone acetate
12 treatment one week prior to his release on parole from the
13 physical custody of the corrections department or another
14 institution and shall remain on the treatment program unless
15 the parole board demonstrates to the satisfaction of the court
16 sentencing the person pursuant to this section that the
17 treatment is no longer necessary and the court enters an order
18 to that effect.

19 C. The department of health shall administer and
20 implement the protocols required by this section. These
21 protocols shall include a requirement that the person subject
22 to treatment pursuant to this section shall be informed in
23 writing about the effect of hormonal chemical treatment and any
24 side effects that may result from it. The person shall provide
25 a receipt in writing indicating that this information has been

1 communicated to him.

2 D. Nothing in the implementation of the protocols
3 developed pursuant to Subsection C of this section shall
4 require a medical doctor employed by the corrections department
5 or the parole board to participate against his will in the
6 program authorized by this section. "

7 Section 39. SEVERABILITY.--If any part or application of
8 this act is held invalid, the remainder or its application to
9 other situations or persons shall not be affected.

10 Section 40. APPROPRIATION.--Eleven million dollars
11 (\$11,000,000) is appropriated from the general fund to the
12 department of health for expenditure in fiscal years 2004 and
13 2005 to carry out the purposes of the Sexual Predator Civil
14 Commitment Act. Any unexpended or unencumbered balance
15 remaining at the end of fiscal year 2005 shall revert to the
16 general fund.

17 Section 41. APPROPRIATION.--One hundred fifty thousand
18 dollars (\$150,000) is appropriated from the general fund to the
19 office of the attorney general for expenditure in fiscal years
20 2004 and 2005 to carry out the purposes of the Sexual Predator
21 Civil Commitment Act. Any unexpended or unencumbered balance
22 remaining at the end of fiscal year 2005 shall revert to the
23 general fund.

24 Section 42. APPROPRIATION.--One hundred fifty thousand
25 dollars (\$150,000) is appropriated from the general fund to the

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1 public defender department for expenditure in fiscal years 2004
2 and 2005 to carry out the purposes of the Sexual Predator Civil
3 Commitment Act. Any unexpended or unencumbered balance
4 remaining at the end of fiscal year 2005 shall revert to the
5 general fund.

6 Section 43. APPROPRIATION.--Two hundred thousand dollars
7 (\$200,000) is appropriated from the general fund to the
8 administrative office of the courts for expenditure in fiscal
9 years 2004 and 2005 to carry out the purposes of the Sexual
10 Predator Civil Commitment Act. Any unexpended or unencumbered
11 balance remaining at the end of fiscal year 2005 shall revert
12 to the general fund.

13 Section 44. APPROPRIATION.--Seventy thousand dollars
14 (\$70,000) is appropriated from the general fund to the
15 department of health for expenditure in fiscal years 2004 and
16 2005 to carry out the purposes of Section 38 of this act. Any
17 unexpended or unencumbered balance remaining at the end of
18 fiscal year 2005 shall revert to the general fund.